IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7424 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANKAJ GAJENDRABHAI @ NAGINBHAI BHAVSAR

Versus

STATE OF GUJARAT,

Appearance:
MS SMITA PATEL for MS SUBHADRA G PATEL for Petitioner
MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 21st June 2000 passed by the Police Commissioner, Surat City, Surat detaining the petitioner under the provisions of the Gujarat

Prevention of Anti Social Activities Act, 1985. Since 21st June 2000, the petitioner is detained in Jamnagar District Prison, Jamnagar.

No reply to the petition has been filed. The grounds of detention enclosed with the detention order show that four criminal cases were registered against the petitioner under the Bombay Prohibition Act as under:

(i) CR No.537/99 under the provisions of Bombay Prohibition Act at Athwa Lines Police Station on the basis of the raid during patrolling by the police.

(ii) CR No.118/2000 under the provisions of Bombay Prohibition Act at Athwa Lines Police Station on the basis of the information received on 10th March 2000 and the raid in which the petitioner was arrested on 14th March 2000.

(iii) During the course of patrolling by the police on 14th March 2000, yet another criminal case under the Bombay Prohibition Act was registered against the petitioner vide CR No.122/2000 at Athwa Lines Police Station for which he was arrested on 14th March 2000.

(iv) Yet another criminal case CR No.183/2000 under the Bombay Prohibition Act was registered against the petitioner at Athwa Lines Police Station for which he was arrested on 2nd May 2000.

For all the above cases, the charge sheets were filed against the petitioner and it is given out that he was released on bail in all the cases. Besides this, the detaining authority has mentioned about two incidents dated 14th May 2000 and 25th May 2000 for which the witnesses have deposed against the petitioner's anti social activities relating to unauthorised liquor and about the non-disclosure of the identity of the witnesses Sec.9(2) of the Act has been invoked. The detaining authority has found the petitioner to be a bootlegger and has found that there is no alternative except to detain the petitioner so as to prevent him from continuing his anti social activities of bootlegging and violent activities and it has also been observed that the petitioner's activities are injurious to public health.

All the allegations to which the reference has been made in the grounds of detention order in the context of the criminal cases and in the context of the statements of witnesses which were recorded on 30th May 2000 and verified on 13th June 2000, even if taken to be true, do not amount to breach of public order and at the most, it can be said to be a case of breach of law and order. The bald mention that his activities were injurious to the public health as mentioned in the order also do not constitute a case of breach of law and order even with reference to the case of Kanuji S. Zala v. State of Gujarat and ors. reported in 1999(2) GLH 415.

Learned Counsel for the petitioner has also argued that the petitioner's wife had represented against the detention on 26th June 2000 but the representation was rejected on 3rd July 2000 by the detaining authority and that the Government had rejected it on 10th July 2000. No explanation has been given about the time taken in deciding the representation.

For the reasons as aforesaid, the impugned detention order dated 21st June 2000 passed against the petitioner by the Police Commissioner, Surat City, Surat cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner, Panjak Gajendrabhai @ Naginbhai Bhavsar detained at Jamnagar District Prison, Jamnagar, since 21st June 2000 shall be released forthwith if not required in any other case. This Special Civil Application is allowed. Rule is made absolute.

(M.R. Calla, J.)

Sreeram.